THE DECALOGUE JOURNAL

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Every Jew A Trustee

We know, from the lesson of history, that the traditions we cherish depend for their life upon the conduct of every single one of us.

It is not wealth, it is not station, it is not social standing and ambition, which makes us worthy of the Jewish name, of the Jewish heritage. To be worthy of them, we must live up to and with them. We must regard ourselves as custodians. Every young man here must feel that he is the trustee of what is best in Jewish history. We cannot go as far as the pioneers in Palestine, but we must make their example to radiate in our lives. We must sense our solidarity to such an extent that even an unconscious departure from our noble traditions will make us feel guilty of a breach of a most sacred trust.

Here then is the task before you . . . It is to promote the ideals which the Jews have carried forward through thousands of years of persecution and by much sacrifice. We must learn to realize that our sacrifices have enhanced the quality of our achievements, and that the overcoming of obstacles is part of our attainments.

Men differ in ability, however great the average ability of the Jew is, but every single Jew can make his own contribution to the Jewish way of life. Every single one of us can do that for himself. Every one of us can declare: "What is mean is not for us." We bespeak what is best, what is noblest and finest in all civilization. This is our heritage. We have survived persecution because of the virtues and sacrifices of our ancestors. It is for us to follow in that path. It is the Jewish tradition, and the Jewish law, and the Jewish spirit which prepare us for the lessons of life . . .

JUSTICE LOUIS D. BRANDEIS

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IN THIS ISSUE

Bernard E. Epton Nominated for Presidency of Society

The nominating committee of The Decalogue Society of Lawyers, Meyer Weinberg, chairman, nominated the following members as officers, and members of our Board of Managers for the ensuing year:

For President .....Bernard E. Epton
1st Vice President .....Reginald J. Holzer
2nd Vice President .....Meyer C. Balin
Financial Secretary .....Judge David Lefkovits
Treasurer .....Harry H. Malkin
Executive Secretary .....Michael Levin

To serve as members of the Board for a term of two years:

Nathan M. Cohen	Eugene Kramer
Saul A. Epton	Irving Landesman
Harry G. Fins	Norman Lettvin
Herman B. Goldstein	Samuel Shkolnik
Nat M. Kahn	John M. Weiner

Election to office will be held at our annual meeting, following dinner, the evening of June 14th, at the Chicago Bar Association, 29 South La Salle Street. Members, their families, and friends of members in the profession are cordially invited to attend.

Member Superior Court Judge Abraham L. Marovitz, the installing officer, will deliver the principal address. Marvin Juron, member of our Board of Managers, will present, with the aid of Decalogue talent, a lively musical comedy. Past president Elmer Gertz will receive a citation of commendation for his outstanding work as chairman of The Decalogue Legal Education Committee.

Decalogue Women's Auxiliary Elects

At a luncheon meeting on May 24, at the Ambassador West Hotel, 1300 North State Parkway, the Women's Auxiliary of The Decalogue Society held an election of officers for 1961-62. The following officers were elected:

President .....Mrs. Frank Shudnow
Vice President, Ways & Means ....Mrs. Meyer Balin
Vice President, Program .....Mrs. Robert Nye
Vice President, Membership ....Mrs. William Sproger
Recording Secretary .....Mrs. Jack Dwork
Financial Secretary .....Mrs. Alec Weinrob
Corresponding Secretary .....Mrs. Harold Nesselson
Treasurer .....Mrs. Isadore Baskin

The Claimant's Approach to Insurance Problems

By GEORGE C. RABENS

Member Rabens, a graduate of the University of Illinois, was admitted to the Illinois Bar in 1931. He was formerly chancellor of Nu Beta Epsilon which he helped establish.

Generally, this article is applicable to claims on fire and extended coverage policies, burglary and theft policies, fidelity bonds, life insurance, health and accident insurance, and the like. My comments are based upon the laws of Illinois.

In the construction of policy terms and provisions, the insured person or company starts with a major advantage. Where there is an ambiguity in a contract prepared by one of the parties, it will be resolved favorably to the other party who is least responsible for its deficiencies. This philosophy has been extended to provide for the insured, as some courts put it, the indemnification to which he reasonably believed he has become entitled. An ambiguity in an insurance policy is any uncertainty or confusion with regard to the application, construction, or interpretation of a particular provision or with regard to various provisions which either are, or reasonably appear to be, in conflict.

The Illinois cases resolving policy provisions favorably to the assured are numerous. A 1959 case states that policies are to be construed liberally in favor of the insured to the end that he is not deprived of insurance for which he had paid, except where the policy clearly, definitely, and explicitly requires it.[1]

In a 1952 decision, it was held that if literal interpretation of policy provisions results in an unreasonable or absurd consequence and substantially defeats the object and purpose of the entire policy, it will be rejected and treated as inoperative.[2]

James v. Metropolitan Life Ins. Co.,[3] declares:

> The law is clear that contracts of insurance, being entirely of the insurer's own making, are construed strictly against the insurer and liberally in favor of the insured, and where two interpretations, equally reasonable are possible, that construction should be adopted which will enable the beneficiary to recover.

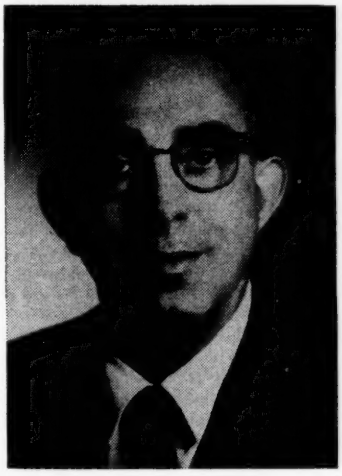
An early Illinois case announced that:

> The companies show a studious solicitude to limit their liability. Their policies are prolix with provisions of this character and the public must accept them or go without insurance . . . It is reasonable to resolve the doubt against the company.

Not infrequently, it is contended by insurers that loss is not within the coverage afforded because the peril insured against was not the direct and primary or sole cause of the damage. The decisions, however, have rejected this argument.

Under the standard fire, lighting and extended coverage policy of insurance, the form employed in Illinois, loss or damage by windstorm is one of the perils insured against. It has been held that if high winds have contributed to collapse, the insured is entitled to indemnification notwithstanding sub-standard construction or condition with which the collapse could not have occurred.[5] Similarly, where claim was made under a burglary policy, it was held that vandalism damage which occurred during the course of a burglary was covered by the policy.[6]

Frequently, an exception or exclusion provision, i. e., a clause under which the insurer claims liability is excepted or excluded, becomes the subject of interpretation. For example, the Wilson case which I have already cited, involved the right to recover when rain resulted in an accumulation of water and an exclusion provision related to damage by "flood, inundation, or high water."[7] The Court said the risk was covered.



GEORGE C. RABENS

My own early experience in just such a situation was the spark which ignited my interest in direct claims against insurers. Under a health and accident policy with a death benefit, the insurer denied liability under a clause excluding death from "heart disease" when the cause of death was "coronary thrombosis and an acute myocarditis." The medical profession universally categorizes the thrombosis and acute myocardities as diseases, but it had occurred to me that to the public at large the term "disease" held connotations of an ailment of a lingering and permanent, or at least, semi-permanent character. The case was tried, the plaintiff prevailed, and the judgment was ultimately sustained in the Illinois Appellate court.[8] It is essential that in the consideration of each and every policy problem, the applicable policy provision be considered in the light of the particular facts which bear upon the claim, for what might be clear and concise under one set of circumstances may amount to an ambiguity in another.[9]

Frequently, if not invariably, you will find that your claimant client has neglected to comply with policy provisions relative to the loss which has been sustained. When such a deviation appears, start looking for waivers. The important factor is that when the insurer has either expressly or by reasonable inference or implication induced a frame of mind in the assured which leads him to believe that strict compliance with the policy will not be required, or if the insured so acts as to make further compliance

with policy provisions a mere futility, an unnecessary and purposeless action, such compliance is excused.

The policies contain what is commonly referred to as a "non-waiver clause," in which it is stated that the policy provisions may not be waived except in writing by the designated representative of the company; however, it has been established that the non-waiver clause may itself be waived.[10]

The policies generally also provide that a notice of loss or damage must be given to the insurer in writing, but as all of us know, such written notice is rarely given. Nonetheless, when a dispute arises between the insured and the insurer, and resort to the courts is required, it is not unusual for the defense that notice in writing was not given to be raised. A 1925 Illinois case is authority for validity of the policy provision; it held that oral notice is insufficient where the policy calls for a notice in writing.[11] However, little is required to avoid the release of the insurer from liability on the unsubstantial and, in most instances, morally unsupportable basis.

For example, it was held that the company cannot stand upon an insufficient notice after advising the assured that the loss was not covered by the policy.[12] A later case determined that where the policy provided for notice to the company agent but notice was given to the office rather than to him personally, there was "substantial compliance" which was sufficient.[13] Another decision concludes that any notice of loss without reference to its form or particulars, is sufficient when it induces the company to send its agents to investigate the loss.[14] It was similarly held that where an insurance company sends an agent to adjust the loss it is estopped to deny subsequently that it had proper notice of it.[15]

The policy provisions relating to notice, the time and form of proofs of loss, and the time within which legal action may be commenced, should all be followed. However, should there be a failure in that regard, as is often the case, the waiver doctrine most likely will come to your rescue for, generally, the courts have been constrained to adopt any reasonable course which will not deprive the insured of coverage.[16] Nevertheless, when the companies, throughout their adjuster, have so acted within that time as to lead the assured to believe that strict compliance would not be required, a waiver may result.[17]

In like manner, it has been held generally that where a policy requires prompt payment of periodic premiums, the acceptance of late premiums on prior occasions constitutes a waiver of strict performance relative to payments which are made later, unless notice is first given that strict compliance will in the future, be required.[18] There is no waiver in the acceptance of a past due premium when at the time of the acceptance it is clearly indicated by the insurer that it does not intend to waive compliance in the future with the provision requiring payment when due.[19]

The reviewing courts have also been generous to the insured when the insuring company asserts as a defense that suit has not been filed within the time prescribed in the policy. Where claim was made for a death benefit under a policy of insurance and the evidence established that the insurer had furnished blanks for proofs and had advised by letters to the claimant's attorneys, as to their preparation, the insurer having full knowledge of the date of death, it was held that proof of a positive act to induce postponement is not necessary to constitute a waiver of the limitation period.

It was held that only a scintilla of evidence is required to present a question of fact for the jury and that negotiations and conversations with the insurer extending through the limitation period may constitute a waiver relative to the policy provision.[20] In another decision, the court in overriding a policy suit limitation defense asserted that when the insurer has held out reasonable hopes of adjustment, the insured is not barred by the limitation.[21]

But now take heed, for there are pitfalls. It is still the law of Illinois that the policy limitation period is valid and not in conflict with public policy, although in contravention of the general statute of limitations;[22] and it has been held that where there was no waiver of time limitation when the adjuster for the company merely listened to a settlement proposal and stated that he would transmit it to his company and advise.[23]

In the discussion of waivers, the courts have adopted a practical approach to the question of insufficient proofs of loss, recognizing that the object is to furnish adequate information to the insurer and not to deprive the insured of coverage on a flimsy or technical ground. The retention of proofs of loss by the insurer, without return to the insured for correction, was held to constitute a waiver of claimed insufficiencies.[24] In one case no formal proofs were filed. The policy had submitted replacement estimates to the company adjuster who had made settlement offers, but nothing was said regarding the filing of proofs. The court concluded that there was sufficient evidence under those circumstances to submit the question of waiver to the jury.[25]

In another case the proof of loss was furnished without a proper magistrate's certificate, the policy requiring it to be under oath. The proofs were retained by the insuring company for a period of six weeks and under those circumstances it was determined by the court that where there is a formal defect in the proofs, it must be pointed out at the time it is presented to permit correction.[26]

The insurers have often availed themselves of the right to appraisal under the policy provision and many decisions have affirmed their right to do so. There seems to be no valid reason why the insurer should not be required to comply with the provision when appraisal is demanded by the insured, but that is an area in which controversy has resulted in divergent decisions. Supporting the view that the insured is entitled to avail himself of the appraisal provision, is a series of cases decided under Minnesota law.[27] The U. S. Supreme Court concluded that the Minnesota statute containing substantially the same provision as the policies we have been discussing did not deny either due process or equal protection of the laws.[28]

On summary judgment proceedings the assured was given the benefit of the policy appraisal clause.[29] An Ohio decision to the same effect is unequivocal, although one Justice dissented on the ground that any agreement in the nature of arbitration is contrary to public policy and unenforceable.[30]

That the provision is not contrary to public policy appears to have been determined,[31] and while not fully clarified as to the policy holder, his right to avail of the policy provisions appears to have been recognized.[32] While the appraisal was held void in an Illinois case because notice had not been given to the insurer of the appointment of an umpire by the claimant, the inference is that had proper notice been given, the resulting appraisal would have been in order and received approval.[33]

Situations arise where there are alternative possibilities as, for example, when the claim lends itself either to a burglary loss or one occurring as a consequence of employees' dishonesty, sometimes under a single policy and at other times under different policies. There are also instances where liability is declined by the company and there is possibility of legal fault and responsibility on the part of a broker. In such cases, it has been held that alternative

theories of liability may be pleaded in a single action against one or more defendants.[34]

The insured, in the absence of admissions of the allegations, is required to prove the isssuance of the policy, the payment of premium, notice of loss or damage, the furnishing of proofs or waivers relative to them, the incident which is the subject of the policy risk and, where the amount of recovery is in issue, the extent and amount of loss and damage.[35]

Affirmative defenses such as fraud in acquiring the policy or in the claim made, or that the loss falls within policy exclusions or exceptions, are affirmative defenses and the burden of maintaining them rests upon the insuring company.[36]

Many policies contain what is known as co-insurance provisions under which in varying percentages, the owner is co-insurer, in the event of a partial loss, to the extent that the risk covered is not fully insured. To evaluate the claim there must be data available not only as to the amount of the insurance but as to the value of the risk which the insurer or insurers have undertaken.

On the question of fraud, the Illinois statute (Chapter 73, Section 766) provides that no misrepresentation or false warranty made in the negotiation for a policy shall defeat or void the policy, unless it is stated in the policy or an endorsement or rider attached to it, or in the application of which a copy is attached to or endorsed upon the policy; and that no such misrepresentations or false warranties shall defeat or void the policy unless it shall have been made with actual intent to deceive or materially affects either the acceptance of the risk or the hazard assumed by the company.

A recent Illinois decision resolved the conflict as to whether to defeat the policy claim both fraudulent intent and materiality are necessary, holding that the insurance claim is defeated if the representation is made either with intent to deceive or is material to the risk.[37] The same conclusion was reached in the Seventh Circuit Court of Appeals.[38]

Unlike personal injury cases, interest at the statutory rate of five per cent begins to accumulate upon a policy claim immediately upon its becoming payable, even though ultimately sustained for an amount less than that of the amount claimed. The allowance is made by virtue of the interest statute applicable to claims on written instruments. It is logical that a policy of insurance is considered such. That position has been sustained in a number of cases.[39]

The insurer may dispute the amount of the claim because the insured's records are not accurately kept. However, records which fairly present the policy holder's status, in the light of the nature and expense of his business, have been deemed sufficient for presentation of the fact questions to a jury.

In a case involving a theft policy claim, where merchandise was taken from a cloak and dress shop, the court stated that it is sufficient compliance with the provision if the books are kept in such manner, that with the assistance of those who kept them or understood the system, the amount of purchases and sales could be ascertained. Moreover, the court declared that the burden of proof to establish insufficiency of records was upon the insurer.[40] Where the same contention of the insurer was encountered, another court ruled that the plaintiff, a peddler of goods, was not precluded from recovery where he kept papers showing in a rough way the amount of purchases and sales. In its discussion, the court asserted that while the provision is binding in a large and complex business, it should be given a reasonable construction in view of the particular business in which it was applied, and in view of all the circumstances connected with it.[41]

Generally, the plaintiff must plead initially those matters which he is compelled to prove. There is a twilight zone, however, relating to waivers which is complex and confusing. It is not at all certain whether proof of waiver may be made under an allegation of performance on the policy conditions or whether the contrary is the case. Therefore, it is best to plead a waiver or waivers, if it is your intention to rely on such contention.

Affirmative defenses, such as conditions subsequent upon which a forfeiture is claimed by the insurer, or policy exceptions and exclusions, are required to be specifically pleaded by the insurer.

FOOTNOTES

1. Wilson v. National Auto Cas. Ins. Co., 22 Ill. App. 2nd 34.
2. Wellborn v. Ill. Nat. Cas. Co., 347 Ill. App. 65.
3. 331 Ill. App. 285.
4. Commercial Ins. Co. v. Robinson, 64 Ill. 265.
5. Queen Ins. Co. v. Larson, 225 F. 2nd 46; Carpenter v. Farmers Mutual Ins. Co., 94 N.W. 2nd 652 (Wis. 1959); Danielson v. St. Paul Fire & Marine Ins. Co., 256 Minn. 283, 98 N.W. 2nd 72 (1959); Worrell v. Springfield Fire & Marine Ins. Co., 10 CCR F&C 501, (Tenn. Ct. of App.).
6. Northland Boxling Co. v. Farmers Mutual Auto Ins. Co., 88 N.W. 2nd 363 (Wis. 1957).
7. Op. Cit. in note 1.
8. Maremont v. Lawyers Mutual, 294 Ill. App. 605, 13 N.E. 2nd 849.
9. Prestigiacomer v. American Equitable Ins. Co., 211 S.W. 2nd 223, (Kans. City Ct. of App. 1949).
10. Gipps Brewing Corp. v. Central Mfrs. Mut. Ins. Co., 147 F. 2nd 6, (U.S. Ct. of App. Ill.).
11. Feder v. Midland Cas. Co., 316 Ill. 552.
12. Massock v. Royal Ins. Co., 196 Ill. App. 394.
13. Cox v. Aetna Cas. & Surety Co., 286 Ill. App. 515.
14. Ins. Co. of North Amer. v. McDowell & Brown, 50 Ill. 120.
15. Home Ins. Co. v. Myer, 93 Ill. 271.
16. Henry v. East and West Ins. Co., 309 Ill. App. 434, 32 N. E. 2nd 931; Lumbermen's Mut. Ins. Co. v. Slide Rule & Sealing Eng. Co., 177 F. 2nd 305 (U.S. Ct. of App. 1949); Simmonds v. Home Ins. Co., 235 Ill. App. 344. But see Oakley v. Indemnity Ins. Co., 173 F. Supp. (U.S. Dist. Ct. 1959).
17. Security v. Dazey, 78 F. 2nd 537.
18. Pesk v. Sagerstrom, 317 Ill. App. 231; Parker v. Railway Mut. Benefit Ass'n, 328 Ill. App. 168.
19. Runnier v. Metropolitan Life Ins. Co., 316 Ill. App. 362, 45 N.E. 2nd 86.
20. Chicago and West. Ill. Rwy. Co. v. Guaranty Co. of No. Amer., 207 Ill. App. 483.
21. Ill. Livestock Ins. Co. v. Baker, 153 Ill. 240.
22. Peoria Marine & Fire Ins. Co. v. Whitehill, 25 Ill. 382.
23. Hansell-Elcock Co. v. Frankfort Marine Acc. & Pg. Ins. Co., 177 Ill. App. 506.
24. Weininger v. Metropolitan Fire Ins. Co., 359 Ill. 584; Heirty v. North River Ins. Co., 3 Ill. App. 2nd 426.
25. Lewis v. Fire Ass'n of Philadelphia, 183 F. 2nd 647.
26. Great Western Ins. Co. v. Staaden, 26 Ill. 360.
27. Abramowitz v. Continental Ins. Co., 212 N.W. 449 (1927); Itasca Paper Co. v. Niagara Fire Ins. Co., 220 N.W. 425 (1928); Glidden Co. v. Retail Hardware Mut., 181 Minn. 518.
28. Hardware Dealers Mut. v. Glidden Co., 284 U.S. 151.
29. Deecher v. Excelsior Ins. Co., 188 F. Supp. 158 (U.S. Dist. Ct. N.J. 1960).
30. Saba v. Homeland Ins. Co., 159 Ohio St. 237.
31. White Eagle Laundry Co. v. Slawek, 296 Ill. 240; Niagara Fire Ins. Co. v. Bishop, 154 Ill. 9.
32. Germania v. Foster, 22 Ill. App. 327.
33. Reilly v. Agricultural, 311 Ill. 562.
34. Alexandre of London v. Indemnity Ins. Co. of No. Amer., 10 CCH — F & C 337 (U.S. Dist. Ct. D.C.); Johnson v. Mutual Ins. Co., 18 Ill. App. 2nd 211.
35. Cox v. Aetna Cas. & Surety Co., 261 Ill. App. 394; Neidhofer v. Automobile Ins. Co. of Hartford, 182 F. 2nd 269.
36. Campbell v. Prudential Ins. Co., 16 Ill. App. 2nd 65; Butler v. National Sl. Ins. Co., 200 Ill. App. 280; Poland v. Supreme Tribe, 211 Ill. App. 176; Goldfarb v. Md. Cas. Co., 311 Ill. App. 568; Gray v. Metropolitan Life. Ins. Co., 308 Ill. App. 1.
37. Campbell v. Prudential Ins. Co., 15 Ill. 2nd 308, affirming 16 Ill. App. 2nd 65.
38. Jessen v. Aetna Life, 209 F. 2nd 153.
39. Jay-Bee Realty Corp. v. Agricultural Ins. Co., 320 Ill. App. 310; Gipps Brewing Corp. v. Central Mfrs. Mut. Ins. Co., 147 F. 2nd 6 (decided under Illinois law).
40. Kaplan v. U.S. F. & G., 255 Ill. App. 437, affirmed in 343 Ill. 44.
41. Weisberg v. United States Cas. Co., 288 Ill. App. 72.

Recommendations of Decalogue Court Case Backlog Committee

On May 5th, 1961 our Board of Managers approved a resolution of the Decalogue Society Court Case Backlog committee, Judge Saul A. Epton, chairman. The resolution recited in detail the appalling situation which the present court case backlog—three to six years old and involving about a hundred thousand pending cases—inflicts upon the lawyer and the plaintiff. The recommendations of the committee are as follows:

To urge the members of the State legislature to pass both bills now pending in the General Assembly of Illinois to increase the number of judges in the Superior Court of Cook County by eighteen and to increase the number of judges in the Municipal Court by a like number. (It is estimated that even if the above figures were doubled, the numbers proposed would still be insufficient.)

To urge an in-service training period for all court clerks in Cook County. An untrained court clerk has proved a great handicap to the administration of the courts work. In contrast, an efficient and trained court clerk has proven invaluable as a factor in speeding up the progress of the Court calendar. No judge, it is believed, can carry on the business of administering justice efficiently without the aid of a diligent and well trained clerk properly briefed.

To urge all members of the bar to be ready for trial, if possible, during the summer months. This, in spirit of cooperation with the "country" Judges who will come to Cook County during the summer vacation period. This will help greatly in reducing the court case backlog.

To advocate that the County of Cook pay masters in chancery to pre-trial pending cases. We firmly believe that the Masters would welcome the opportunity to assist in reducing the deplorable case backlog since they have every necessary qualification to conduct efficient pre-trial conferences. A crash program of this kind would greatly reduce the court case backlog provided, of course, immediate preparation for trial would follow any unsuccessful pre-trial conference.

To impress upon all parties in interest that we must have more adequate court facilities to house the courts, the juries and the general administration of justice. The need for increased court housing facilities is appalling.

The Decalogue Court Case Backlog committee urges that our entire membership enlist its efforts in the cause of helping adopt legislation on this vital matter now pending in Springfield.

Freedom For Expression

Doubtlessly, dictators have to stamp out causes and beliefs which they deem subversive to their evil regimes. But governmental suppression of causes and beliefs seems to me the very antithesis of what our Constitution stands for. The choice expressed in the First Amendment in favor of free expression was made against a turbulent background by men such as Jefferson, Madison, and Mason—men who believed that loyalty to the provisions of this Amendment was the best way to assure a long life for this new nation and its Government. Unless there is a complete freedom for expression of all ideas, whether we like them or not, concerning the way government should be run and who shall run it, I doubt if any views in the long run can be secured against the censor. The First Amendment provides the only kind of security system that can preserve a free government—one that leaves the way wide open for people to favor, discuss, advocate, or incite causes and doctrines, however obnoxious and antagonistic such views may be to the rest of us.

Justice Oliver Wendell Holmes
268 U.S. 652

DECALOGUE LUNCHEON MEETINGS

On Friday of each week the Board of Managers of The Decalogue Society of Lawyers meets in a private dining room for luncheon, at noon, at the Covenant Club, 10 North Dearborn Street. Members are invited to attend, listen to committee reports, and learn of the activities of our Bar Association. No reservations necessary.

" 'What do you know about this business?' the King said to Alice.
'Nothing'; said Alice.
'Nothing whatever?' persisted the King.
'Nothing whatever,' said Alice.
'That's very important,' the King said, turning to the jury."

Lewis Carroll,
Alice in Wonderland.

My Stewardship

By L. LOUIS KARTON, *President*

Much more rapidly than I had thought possible, the year of my presidency has come to an end. A sober evaluation of the year's results shows significant progress in some directions—much remains to be done in others.

In the legal education field, we have again done an outstanding piece of work and have made new contributions to the post-graduate studies of our members. Elmer Gertz, chairman of the Legal Education Committee, at a great sacrifice of time which was already heavily committed, was prevailed upon by me to accept the chairmanship for a third year. His program series this year even exceeded the fine program of the past two years. I am grateful for his cooperation and I express my personal thanks as well as the appreciation of the Society.

As a permanent memento of our feeling, the Society has voted to present to Elmer Gertz a citation which I shall read:

> The Decalogue Society of Lawyers presents to Elmer Gertz this Citation of Merit: In recognition and appreciation of his consistently outstanding contributions to the progress of our Society, as well as to the entire legal profession, as chairman of The Decalogue Legal Education Committee.
>
> L. Louis Karton,
> President
> Michael Levin,
> Executive Secretary
>
> Presented at
> Chicago, Illinois
> June 14, 1961

Elmer, please accept this scroll as an expression of our sentiments. You have, however, I must warn you, made such a fine record, that I fear my successor will have a very difficult task to find a replacement for you.

Our Journal continues as an expression of the Society's news and legal views. An increasing number of the country's law school libraries have it on their shelves, and this year we added to our international circulation when the Library of Parliament in Stockholm, Sweden, solicited us to send them the Journal. Ben Weintroub, our Editor, may well be pleased and we are justifiably proud. We are now sending the Journal to The Law Library, Manila, Philippines and to Prof. Norman Bentwich, Law Faculty, Hebrew University in Jerusalem, Israel; we have a member in Haifa, Israel and two in Montreal, Canada.

I have aimed at greater membership participation in our activities and I am happy to report that we have made significant progress. Each forum luncheon has drawn consistently larger audiences. The judicial candidates were very well received. For brotherhood week, Archibald Carey was heard by a substantial crowd; discussing Israel's economic problems, we had Dr. Jacob Tsur; our Law Day, U.S.A. program was one of the most outstanding in our history, or even in the history of any local bar association. We made a contribution in the field of public relations for the legal profession which will stand as a challenge for many years to come. The work of our Forum Chairman, Reginald J. Holzer, was outstanding and the Society is fortunate that it will have him as first vice-president in the coming year.

L. LOUIS KARTON

Our annual Israel Bond dinner was a memorable one. We honored our members, Chief Judge Jacob M. Braude of the Circuit Court, and Chief Judge Samuel Epstein of the Superior Court. The attendance was the best we have had to date and our bond sales were substantial. The work of Harry H. Malkin, a real dynamo, was a demonstration of what one man with determination, heading a willing committee, can accomplish. We have cause to be enthusiastic about that affair.

That was followed by a successful Toast to the Bench. More and more, each year, this Chanukah holiday season party increases in popularity as an

occasion to meet and relax with the judges over a cocktail and canape.

The highlight of our social events, the Annual Award of Merit dinner, set a new Decalogue record. It exceeded in attendance all previous affairs, and was a tremendous expression of approval of our selection of our own member, Judge Julius H. Miner. Let it never be said that a prophet is without honor in his own home town. We honored one of our own and he more than justified it. His cooperation and enthusiasm helped make this a great occasion.

We have saved for tonight the presentation of an accumulation of mementoes of the occasion. Judge Miner, will you come up and receive this book?

I do not wish to fail to express my appreciation for those who worked so hard on that event. Samuel Allen, who headed the Award Selection Committee; Bernard Epton who executed the myriad of details which made the affair run so smoothly; a particular word of commendation to Marvin Victor whose superb handling of the tickets and reservations was a feat of management which taxed his facilities to such an extent that he had to go to Florida for a rest a week *before* the dinner. I am deeply appreciative of their contributions.

The year was not entirely one of successes. Inspired by the enthusiasm which carried over from last year's trip to the United States Supreme Court, we had planned a 1961 summer convention in Israel and set up a committee to take care of the details of the tour. Under the chairmanship of past-president Meyer Weinberg with past-president Jack E. Dwork as Convention Chairman and Meyer C. Balin as chairman of the Tour Committee, the committee did an intensive job of arranging air travel and an itinerary to cover twelve days in Israel and nineteen days in Europe. To my regret, an insufficient number of reservations were received to enable this event to come to a successful fruition. All of the details, transport, side trips, hotels, were arranged in detail but with an insufficient number of reservations the affair had to be cancelled. I want to express to Meyer Weinberg, Jack Dwork and Meyer Balin and their committees, my sincere appreciation for the fine work which they contributed to the Society. The cancellation of the event was in no way their fault and I want them to know that their fine work has not gone unappreciated.

I fell far short of what I had hoped to achieve with our Hebrew University Law School fund. I had looked forward to making a real step toward realization of that objective and discharging the obligation which we had assumed. I leave that for my successor among the matters of unfinished business.

We have done a considerable amount of substantial work in connection with proposed legislation and have carefully considered the question of the court back-log and the remedies suggested. We have communicated to the legislature our approval of pending bills for an increase in the number of judges of the Superior Court of Cook County and the Municipal Court of Chicago.

We have also this year had a great deal more of inter-bar association cooperation. I have had several occasions to confer with the presidents of the other bar associations on matters of general concern to the legal profession. This I believe to be a great step forward in the fact that our increased stature in the bar association field has been recognized by our colleagues.

We end this year with more money in the bank, more members on our rolls, more achievements to our credit and more and greater problems to look forward to. Our membership during the year has made a great step forward along the path chartered by the founders of the Society. Much remains to be done. I am satisfied that the officers elected tonight are qualified to carry on in the traditions of the Society for the betterment of the profession and the Jewish lawyer.

I am deeply grateful for the year of service which you have enabled me to contribute to Decalogue. I am grateful to the officers and members of the Board who have worked diligently to help the Society make these great strides forward. I shall miss leading this group as its president. I shall always be available whenever the Decalogue Society of Lawyers needs my assistance.

MICHAEL M. ISENBERG, *new Trust Officer* Central Bank and Trust Company, Miami, Florida

Michael M. Isenberg, formerly of Chicago, a charter member and one of the organizers of The Decalogue Society, was recently elected a vice-president and trust officer of the Central Bank and Trust Company of Miami, Florida, a post formerly held by the late Judge Oscar S. Caplan.

Mr. Isenberg organized The Chicago Club of Greater Miami and served as its president for several years. For the past three years he has been a director of the Dade County Bar Association.

Mr. Isenberg invites inquiries from members of our Society on banking matters dealing with Florida.

Law and Justice in Cuba -- Before and After Castro

By SILVIO SANABRIA

Following is a somewhat condensed version of an address by Silvio Sanabria, president of the Havana Bar Association (in exile) delivered before the Decalogue Society at a luncheon at the Covenant Club, on April 28th, 1961. The meeting was arranged by the Decalogue Forum committee, Reginald J. Holzer, chairman, in celebration of our Society's annual observance of Law Day, U.S.A.

From January 1, 1959, under Castro, there began the dissembling, the deceit, the betrayal, and the hand-over of Cuba to the Communist block. Fidel Castro had given every verbal assurance that he intended to respect all faiths, and to give the appearance of credulity to that statement, the soldiers who arrived victoriously to Havana with him all wore with exaggerated ostentation religious medals suspended from delicate gold chains around their necks. This play was in reality overdone . . . it was "protesting too much," and even at the time there were not a few who wondered whether it was just a play for sympathy in a Roman Catholic country. Certainly, it didn't take long for Castro to begin to defame religion as something contrary to the interests of the people, and that has progressed until just recently when the arrest was announced of a bishop, and a hundred Roman Catholic priests, all for being opposed to Communism.

Fidel Castro assured his listeners and followers that peace would reign in Cuba, that the country would not be attacked by anybody, and the armaments were unnecessary. Overcome by the tremendous wave of optimism, enthusiasm and sympathy for Castro which engulfed the whole country at that moment, all the groups which had been battling against the regime of Batista, readily accepted the dictum to turn over their arms to Castro and Co. Little time was to pass before the purchase of arms in enormous quantities was to be started from Russia and Czechoslovakia, and Castro would brag that his armed force, made up of an army of 300 thousand (sic) civil militiamen, was invincible, and constituted the most powerful armed force in all of Latin America.

Castro deceived the Cuban people and likewise the people of the United States, giving assurances that he was going to have honest elections within eighteen months. Little time was to pass before he had the affrontery to come forth with the pronouncement that elections were not at all necessary because he, as often as required, would make a direct consultation with the people assembled in some public square, thus to exercise what he called "direct democracy," mouthing the phrase as if he had been the inventor of such mob-rule.

Castro assured Cuba that he was going to institute a gigantic program of industrialization which would end unemployment in Cuba. Little time was to pass before commerce and industry were to be pirated by his government from its rightful owners, making the State the sole owner of all the means of production, transportation and communication.

Castro offered the farm laborers the ownership of the soil they cultivated and with such promises achieved the tolerance of the public for the occupation of the soil. But very little time was to pass before the farm laborer found that he was just a State hireling with a lot of obligations to that State, but with no rights nor voice whatsoever, just a cog in the cooperatives totally administered by the government.

Castro offered liberty of expression, but just as soon as any news medium made any objection to any of his points of view, he shouted out over television with capricious shallowness that such was promptly to be considered against public interest. Verbally brandishing that club, it was easy to justify the highjacking of all the newspapers, magazines, radio and TV stations and to arrogate to the government total ownership and control of all of them. Today their freedom consists in being able to repeat the kilometric harangues ordered by the government for the purpose of creating hatreds; and of planting terror for those who might differ with them . . . The gravest crime today in my country is to dissent with—and I can go even farther—to fail to demonstrate enthusiasm over, government policies. The penalty starts at six years, can go to thirty years, and with the utmost ease can reach that most favorite penalty of all, to be shot by the firing squad.

The leeway indicated above for the penalties imposed reflects faithfully the awful fact that for the past two years, Cuba has just not lived under any semblance of law; and even less under a democratic juridical regime to which all civilized nations of the West aspire to live and which out of respect for old and deep-rooted traditions were established in our Constitutions.

It is true that on the 7th of February 1959, the Cabinet of the Revolutionary Government placed in effect a simulation of Constitution which they called a "Fundamental Charter" which declared Cuba to be a democratic republic, organized for the enjoyment of political liberty, social justice, individual and collective welfare and human solidarity. It is equally true that the "Fundamental Charter" in general wrapped up the classic individual human rights which painted a hope of liberty and justice for the Cuban people. But even then in the "Fundamental Charter," there were included limitations by way of "Transitory Provisions" which still are in force, which they explained at the time, as necessary for the "Triumphant Revolution" to be able to consolidate its efforts, faced as it was with the "shambles" left it by the dictatorship it had defeated.

The Cabinet, which arrogated solely to itself the legislative power, and constitutional power, making repeated use of the latter, had modified that "Fundamental Charter" every time it had seemed convenient to do so, to justify and make constitutional, as it were, any laws it desired to promulgate, and which otherwise would have violated the classic and original text of what was the Constitution of 1940, or the thrown together "Fundamental Charter."

In May 1959 the suspension of the Habeas Corpus was prolonged and similarly the right to be judged by ordinary courts of law, as applied to individuals called before revolutionary tribunals and others mentioned above.

In June of 1959 the precept prohibiting the death penalty was modified, increasing the classifications of those subject to such penalty, and including among others counter-revolutionaries.

In October of 1959 the jurisdiction of the revolutionary tribunals was extended to include counter-revolutionary

"crimes" and for those accused of such the right of Habeas Corpus was suspended. In December of 1959 an addition was made to the article dealing with confiscation of property, making an exception of properties of those penalized for counter-revolutionary activities. This new "Constitution" was modified again in June of 1960. In the following month, July, 1960, for the second time the precept covering confiscation was modified, to establish that in cases of expropriation of property, the law would regulate the process to be followed, the causes, the medium and the form of payment, and removing these questions from the jurisdiction of the Courts, which in Constitutional Law would handle them.

Finally, last December precepts were modified as fundamental as the retroactivity of laws, the unalterability of civil obligations, the organization of the Supreme Court, and a suspension was declared for 45 days of the immobility of judges, and practically the right of unconstitutional appeal was suppressed.

Based on these precepts and analogous dispositions, the death penalty has been handed down for so called crimes committed before the promulgation of the law which punish them. And, citizens are detained, or as it is called "retained" depriving them of their liberty and without bringing them before any court, for as long a time as esteemed convenient by the authorities, when accused of or simply suspected of opposition to the government, or who simply have been irresponsibly pointed out as counter-revolutionaries.

But amendments and alterations to the "Constitution" haven't stopped even there. In May of 1959 and in October of 1960 there were promulgated respectively the Laws of the Agrarian Reform and the Urban Reform. These two Laws unfold precepts which contradict so radically even the so-called "constitution" of 1959 and all the previous Constitutions that Cuba has had, that to make them above attack it was decided to follow an unusual procedure by declaring them all to be an integral part of the "Fundamental Law," thus clothing them with constitutionality. These Laws totally suppress the classic attributes of property rights, both farm and city, and identically the requisites generally indispensable in modern legislation and international law for effecting expropriations. Nothing more is needed than those two Laws to measure the distance at which the regime in my country lies from the judicial systems of democratic countries.

Similar uncertainty and instability characterizes the rest of the legislation, if it can be called that, in the absence of any legislative arm of the government, this function as mentioned above having been totally arrogated to itself by a Cabinet which in turn is arbitrarily named and totally run by a Prime Minister who in turn dictates to a figure-head "President" who was appointed by him. In the period of two years the penal laws have been frequently modified, and in various cases solely in order to amplify the jurisdiction of the military courts.

Corporations and banks which were property of North Americans, have been nationalized in reprisal for economic measures taken by the government of the United States. Banking activities have been classed as public functions which can be only exercised by the State and therefore the Cuban banks have been incorporated into the State.

As a result of laws, or upon orders of the authorities, or on illegal action on the part of Communist groups, tolerated by the Government, individual liberties under this present government have totally disappeared. The Habeas Corpus has disappeared. The detentions have become indefinite imprisonments. Free enterprise simply does not exist. Real property, industry and commerce are all State owned, or State operated and administered. Workers rights dealing with salaries, hours, and unionizing have all been dropped into the hands of the Minister of Labor. Freedom of expression does not exist. The Government took over the radio and TV stations one by one. On order, or under tolerance of the authorities, any periodical opposed to the Government was taken over.

Drastic restrictions have been applied to the faculties of the Judiciary Power. In penal law, Revolutionary Tribunals function, not made up of career judges but by members of the army or individuals devoid of judicial knowledge casually designated as such by the Government, and which at times due to their youth lack both the maturity and experience which any man needs to act as judge of the life of a fellow man. Their sentences are appealed before tribunals of identical make-up which in turn rapidly render judgment in summary proceedings, imposing even up to the sentence of death.

These Revolutionary Tribunals do not respond to the concept which the legal profession holds for Courts of Law. In them there stands out the political objective behind their creation and function.

In civil and administrative material, many of the functions of typically judicial character have been removed from the dominion of the judges and placed in the hands of administrative organisms which are under the direction of public employees named by the Government. It is so evident that the intention is to make the tribunals unnecessary and useless that the Prime Minister himself stated that legal controversies had been greatly reduced and that the tribunals as of now have less work on its hands.

The Communist regime of Castro has dictated more than a thousand laws in the brief space of two years, besides an infinity of regulations, resolutions and orders of the most diverse kind. Illegality in Cuba consists of the law itself, for in itself it is illegal by the standards of civilized nations.

Fidel Castro affirmed a year ago: "For the old law let there be no respect. For the new law, all respect." False. The new Law is neither Law nor does any one respect it, beginning with the author of it himself.

I do not mean to infer by any means that in Cuba there exists a transitory suspension of Law. Such has happened with frequency enough in our hemisphere. We have suffered from atrocious and stupid despotisms, but I am not referring to them. I do mean however, and listen well, the systematic destruction of a system of life and government to substitute for it the Communist system. Finally in one of his most recent discourses, after having received the benefit of the doubt for so long, Castro took off the mask and affirmed that Cuba is a Socialist Republic.

Certain questions have to be asked and answered. The first question has already been gallantly answered by President Kennedy in his valorous recent letter to Premier Khrushchev. "I believe," said the President, "that free people in all parts of the world do not accept the claim of historical inevitability for Communist revolution. The great revolution in the history of man, past, present and future, is the revolution of those determined to be free." President Kennedy is right. The Communists have always affirmed that the Communist Revolution is inevitable; and that hence, it is irrational to oppose such a force which necessarily will triumph. But this thesis is far, far from being demonstrated. It is neither more nor less than a dialectic play to obedience; and mankind has never in history voluntarily accepted either slavery or freedom.

Mankind, on the other hand, has shed too much blood in the past conquering this liberty to submit willingly to physical and mental slavery.

The second question is more subtle. Communism did not decide to take over Cuba because the Cubans wanted it, and still less because Communism offered better living conditions. Communism took Cuba over because Fidel Castro willingly delivered it over to them, betraying the objectives which he had so loudly proclaimed for his revolution; and thus deceiving the people of Cuba whose backing he had achieved under the promise of an honest democracy. Cuba was selected because there, discontent against a dictatorship was rife, and the situation was propitious for under cover infiltration of just the kind Castro had carried on. Exactly the same can happen in any other Latin American country. If the Cuban people had suspected that Castro was going to implant Communism, I take no risk at all in assuring you that he and his movement would have been rejected, even under the Batista dictatorship, from which Cuba would have been freed through other means.

There was no special motive for Communism to pick Cuba from among all the Latin American countries, except for her proximity to the United States and specifically the Florida coast, which facilitates greatly infiltration into the United States. Cuba was merely a means of introducing themselves into the Americas, at will and caprice, to the North, to the South, to the East or to the West; a site as good as any other and better than most for distribution of propaganda literature; and it should be recalled that the establishment of "Prensa Latina" was an early item on their agenda. For your information, this is a quasi-news service moulded to the Communist ideals, financed by Castro, possibly together with Mao Tse Tung, and its top function is to spread news with the Communist tinge, while being useful for any other activities such as distributing money to Communist workers. In Cuba the situation lent itself to establish the headquarters to weaken and destroy the American democracies; and especially the democracy of the United States of America which is the staunchest bulwark against Communism.

These statements made so categorically may seem incredible to you. No one, but no one, can believe that a people so strong, and so rich as the United States could ever fall under the heel of Communism. No one as of this date can say if this will or will not ever happen. But, the world knows that the Communists ardently seek that goal, and work intensively to achieve it.

We Cubans, also, were just as incredulous when we read about Communist activities in other countries. We were incredulous even when their activities became evident in Cuba. The belief always existed that before any socialization of us could become complete, the evolution would somehow or other be detained.

But today I can speak with the weight of authority of one who has witnessed and suffered the experience of his own country converted in less than two years into a Communist country; with all properties and means of production owned by the State, without private enterprise, and with our people obligated to live their lives as ordered by those in power.

The effectiveness with which Communism acts, making continuous use of dissembling and deceit, is often not discovered until too late. For that reason democracy can be saved only and exclusively by constant and never ceasing alertness and vigilance.

It must be borne in mind that the propaganda methods of the Communists never were the direct ones used typically by political ideologies. Those of the Communists, right from the start, were indirect, subtle, and frequently even seemed irrational and impractical. For those very reasons they were underestimated and allowed to pass like little flames of fire which were harmless and could be extinguished easily at any time. Nevertheless because they were not dealt with then they continued to float in the minds of the people as possible shelters to which they could flock in a moment of crisis.

Based on that admiration, I feel the necessity to appeal to all of you, and especially to the lawyers for something which is deep in my heart and mind. I do not arrogate to myself the privilege or intellectual status to attempt to counsel this audience which has already a thorough knowledge of human problems; but I feel it is my duty to you who have so kindly heard me so far, to frankly expound my fears. Your nation today is the leader of the democratic West. Your influence today is unquestionably tied up with the destinies of other countries. Cuba, just ninety miles away from the Florida coast and bound to the United States by close bonds of friendship and economic inter-relations, has almost without exception depended on the influence and direction of the United States.

Fidel Castro achieved his power helped and backed by the United States. Arms from the United States, aid from the United States, propaganda from the United States were the essential factors of his triumph.

Now that he has turned against the United States to carry out his plan to turn Cuba over to the Communists he has the cynicism to invoke the doctrine of non-intervention. You, and when I say you I mean the whole nation, made the same mistakes as we, but you were the leaders who with your influence decided the fate of Cuba.

We are struggling to free ourselves from the monster of Communism but this struggle is not ours alone. It is of all the peoples of this hemisphere, and above all, yours.

Fortunately, President Kennedy interprets it so in his recent statement. I believe all citizens, and especially the lawyers of this freedom-loving country, have the obligation to back a valiant and resolute action which will liberate Cuba and save America from the Communist invasion.

ELMER GERTZ ACTIVE

Mayor Richard J. Daley has named past-president Elmer Gertz and member Judge A. L. Marovitz to the Chicago Civil War Centennial Commission.

Gertz has been renominated as President of the Greater Chicago Council of the American Jewish Congress.

On April 25th he participated in a panel discussion on Federal Aid to Education at the University of Chicago Law School.

The Law Day Issue of the Chicago Daily Law Bulletin contains an article "Lawyers and Civil Rights," by Gertz.

Gertz is doing an article on "Chicago Jews in Government" for the Jubilee edition of the Chicago Sentinel. He has been asked to contribute a weekly commentary to the National Jewish Post.

Applications for Membership

MEYER C. BALIN, *chairman*

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Decalogue Outing On July 11 At Chevy Chase Country Club

Interest in The Decalogue Society of Lawyers annual outing on July 11 is mounting daily. Reginald J. Holzer, chairman, insists that the 1961 event at Chevy Chase Country Club, on Milwaukee Avenue (Route 21—one mile north of Wheeling, Illinois) will surpass in number of attractions all like affairs of prior years. Aside from the annual Decalogue Golf Tournament, with its valuable awards to the winners, there will be swimming exhibitions in the Chevy Chase luxurious outdoor pool, and horseshoes, chess and card games. As usual there will be available for members and their guests beautiful door prizes.

Dinner at 6:30 P.M. in the air-conditioned dining room. Dancing will be to the music of a widely known local orchestra. Tickets are $10.00 per person. Please telephone or write for your reservations to the Society's office, 180 West Washington Street, ANdover 3-6493.

The Art of Cross-Examination

Not every cross-examination
Deserves unstinted commendation.
Did he drive sixty or drive ten?
Fifty? Twenty?—Seesaw then.

Why be evasive, Mr. Rich?
You met head-on but which struck which?
Did you observe what cars were there
While you were flying through the air?

How long were you unconscious, sir?
The answer's hearsay, I concur.
Did you admit you were to blame
Before your own adjuster came?

You must not guess but estimate
How far you drove and at what rate.
What length of time elapsed between
The crash and when the light turned green?

Colliding drivers, though in terror,
Could minimize judicial error
By reading their speedometer,
A stop-watch and micrometer.

From *Judicial Jingles*
with the permission of
the author, Judge Frank G. Swain.

Miami Court Bans Religious Holiday Observances In Public Schools

A major court case, testing religious observances and practices in the Miami public schools, was concluded on April 15 with the handing down of a decision by Judge J. Fritz Gordon of the Circuit Court of Dade County, Florida.

A joint statement issued by the American Jewish Congress and the American Civil Liberties Union, who provided attorneys for the five plaintiffs in the case, hails "three key rulings" in Judge Gordon's decision as "a victory for religious freedom." At the same time the AJCongress and ACLU state that they intend to appeal another portion of Judge Gordon's decision, which upholds certain religious practices, also challenged by the plaintiffs.

According to the AJCongress-ACLU statement, "three precedent-making rulings" in Judge Gordon's decision, "signal an historic advance in the effort to protect the public school child from invasions of his religious conscience." The statement notes that "this is the first time in American history" that a court has banned the following sectarian practices in the public schools: holding religious holiday observances such as the depicting of the Nativity and Crucifixion of Jesus; the showing of religious movies; and the use of public school facilities for after-school religious classes.

Parts of Judge Gordon's decision upheld other practices which AJCongress and ACLU attorneys had termed "unconstitutional and divisive." Those include such practices as daily Bible readings required by state law; recitation of the Lord's Prayer; display of religious symbols and the holding of baccalaureate programs.

The joint AJCongress-ACLU statement contends that these rulings and "other aspects of Judge Gordon's ruling revolve largely around questions of fact. The constitutionality of such objectionable practices as a religious test for teachers and a religious census of pupils remains unanswered." The statement goes on to say that "on these issues and on the issues of the recitation of the Lord's Prayer and reading from the Bible, we intend to take an appeal in the hope of ultimately obtaining a ruling from the United States Supreme Court." The statement was signed by Leo Pfeffer, general counsel for AJCongress and Rowland Watts, legal director of ACLU.

The Miami religion-in-the-schools case proved highly dramatic and was a focus for intense local and national interest because of the nature and extent of the religious practices at issue. A series of ten religious practices in the Miami public schools were challenged by the five plaintiffs and defended by the Dade County Board of Public Instruction. American Jewish Congress attorneys, Leo Pfeffer and Bernard S. Mandler represented four plaintiffs, three Jewish and one Unitarian parents. Two American Civil Liberties Union attorneys, L. Heiken and Howard Dixon represented an agnostic parent.

Courtesy, American Jewish Congress

Younger Members Hear Expert on Estate Planning

Austin Fleming, an attorney with the Northern Trust Company, spoke before the Decalogue Society younger members group the evening of March 20th, on "Estate Planning." The meeting was held in the quarters of the First Federal Savings and Loan Association, 7 So. Dearborn Street. The speaker, an expert in his field, addressed an appreciative audience on various pitfalls in estate planning against which younger lawyers, with necessarily limited experience in practice, must be constantly on guard.

HARRY G. FINS

Member of our Board of Managers Harry G. Fins, author and lecturer, addressed a Decalogue Society Forum on April 14th, at a luncheon in the Covenant Club. Fins' subject was "Critique of the Proposed Illinois Judicial Article of 1961."

Second vice-president Reginald J. Holzer is chairman of the Decalogue Forum committee.

SENATOR MARSHALL KORSHAK HONORED

Member Senator Marshall Korshak was feted at a dinner sponsored by Greater Chicago B'nai B'rith Council on May 7th at the Morrison Hotel on the occasion of Israel's Bar Mitzvah year.

COMMERCIAL NOTE

Members Max M. Rappaport and Maurice I. Levy announce that they are two of the three general partners in a new hotel-motel located in Springfield, Illinois, and known as State House Inn. Patronage of Decalogue members is cordially invited.

SAMUEL S. BERGER ELECTED

Member Samuel S. Berger was elected recently to the Board of Trustees (equivalent of City Councilman) of the Village of Skokie.

Berger is founding president of the Skokie Traditional Synagogue.

BOOK REVIEWS

THE FIRST AND THE FIFTH, by O. John Rogge. Thomas Nelson & Sons, 358 pp., $8.50.

Reviewed by IRWIN N. COHEN

The title of this provocative book by a former Assistant U.S. Attorney General refers to the First and Fifth Amendments of the federal Constitution; more particularly, the book deals primarily with two great individual liberties—the First Amendment's guarantee of freedom of speech and of the press, and the Fifth Amendment's protection of the right to silence.

With reference to the right of freedom of speech the author takes a position in advance even of that of the Warren Court. Rogge is of the opinion that the freedom of utterance, at least so far as Congress is concerned, is absolute unless connected with criminal conduct other than advocacy. In his opinion, Holmes' "clear and present danger" test produces mischievous results. The shouting of "fire" in a crowded theatre, to which the Justice alluded, in the view of Rogge, is not speech nor advocacy; it is criminal conduct the same as firing a gun or lighting a fire. While recognizing the fundamental distinction between individual action and action pursuant to a conspiracy, the author concludes that "even a conspiracy to cause a violation of the law, if the means to be employed consist of advocacy, should go unpunished." Rogge believes that by the "clear and present danger" test the Supreme Court has created an exception to the First Amendment which the framers of the Bill of Rights did not intend.

As to the right of silence, Rogge's opinion is that that right is not quite as absolute as the right of utterance because, historically, certain immunity acts which, in effect, compel testimony are older than the Fifth Amendment which grants the right to silence. The author takes a dim view of the compulsory testimony acts which grant immunity in return for the constitutional privilege to remain silent. He is of the opinion that they violate the separation of powers doctrine, in that they confer the power to grant immunity, which is properly an executive function, upon a court, whose only proper function is to interpret the laws and determine whether accused persons are guilty or innocent. Furthermore, argues the author, the benefits flowing from these immunity acts are largely illusory; most of the wanted information can be obtained "because human beings have a compulsion to confess to something." Many prosecutors and investigators will disagree with this view of human nature, particularly insofar as it refers to those persons sufficiently sophisticated to know of their right to counsel. The trend to immunity statutes, says Rogge, will bring about a change from our "accusatorial" system to the "inquisitorial" method of totalitarianism. "To obtain this possible additional mite we give up part of our heritage. The cost is too high."

The author deals with the oft-considered question whether the Fourteenth Amendment incorporates the first eight amendments, thus making them applicable to state action. Rogge agrees with the majority of the Supreme Court in denying the validity of this theory, but concludes that, in effect, the Fourteenth Amendment does restrict state action in areas covered by the first eight amendments "by reason of its own inner meaning."

Rogge makes no pretense of presenting a balanced point of view. His sympathy is all for the accused individual (the "deviant") who asserts a constitutional privilege. The style is predominately that of forceful advocacy. The author's wide, first-hand experience in the field has enabled him to make penetrating observations of an intensely practical nature. He has effectively combined courtroom experience and legal scholarship to produce a valuable contribution to an important branch of the law.

THE FEAR MAKERS, by Wilfrid Schilling. Doubleday, 312 pp. $3.95.

Reviewed by ALEC E. WEINROB

The scenes of this tragic story are laid in West Germany, in 1956, eleven years after Hitler committed suicide in a Berlin bunker and the West German government, to prove its solidarity with the precepts of a civilized state, had set up de-nazification courts. The central figure in the volume is one Alfred Link, a reputable German journalist who after the war cooperated with the French underground to expose Hitler's agents and other unsavory characters who worked for the glory and profit of the Fuehrer's state.

Charges are concocted against Link that at the end of the hostilities he kept for his own use a watch that he removed from a felon and failed to turn same over to proper authorities. Link's protestation to the contrary, he is arrested by the police and incarcerated. No bail is granted and his lawyer's efforts to release him are in vain. The judicial and administrative machinery of "V," the chief town of the district in which Link has made his home, is now in the hands of neo-Nazis who, more than a decade before, were athwart of Link's activities to expose Hitler's agents and other crooks.

To a person familiar with the Anglo-American system of jurisprudence it is amazing and shocking

to learn the seeming lack of basic principles of justice in the West Germany's legal code: the right of the accused to bail, the right of habeas corpus, and the presumption of innocence of the accused until proved otherwise. This reviewer's knowledge, however, is based upon the factual recitation of the incidents described and the contrary, perhaps, may be the case.

Link's long stay in jail ends when an "Appeals" court decrees his release and orders that a trial take place. At liberty again Link learns that his lawyer refuses to represent him as defense counsel because of fear that no honest day in court is possible for the accused with the neo-Nazis on the bench.

Link and his wife decide to leave for Switzerland but are deterred from leaving Germany by a friend who insists that their escape would be abandonment of the cause of decency and would be against the best interests of Germany. Link must stay, he urges, and suffer the consequences. To do otherwise would make easier the entrenchment of viciousness that still prevails in a Germany much of which yearns for the return of Hitlerism. Link decides to remain and on that note of suspense and uncertainty the book ends.

It is a discouraging and an incredibly depressing volume. In many parts of "modern" Germany there are, as Chancellor Adenauer recently stated, hundreds of jurists tainted with the virus of Nazism. Others hold posts of commanding influence and importance. Germany's bid for acceptance into civilization must wait until that state proves itself worthy of such honor and cleanses itself of the vermin still in its midst.

IMMIGRATION LAW AND PROCEDURE, by Charles Gordon and Harry N. Rosenfield. Banks and Company. 1,180 pp. $25.00.

Reviewed by NATHAN T. NOTKIN

Member Nathan T. Notkin was formerly with the Chicago office of the Immigration and Naturalization Service where he served for nearly three years as Naturalization Examiner.

This is a definitive treatise on the entire subject of immigration law and procedure. The authors are recognized authorities in the field. Gordon is the Regional Counsel for the Northwest Region, Immigration and Naturalization Service, while Rosenfield is the chairman of the Committee on Immigration and Nationality, Section of Administrative Law, of the American Bar Association. The entire subject of immigration, commencing with a general survey of its legislative history, the government agencies involved and miscellaneous procedures, is covered amply and competently.

The book specifies which classes of aliens may enter the United States and the appropriate procedure needed to follow. It reviews the entire subject of deportation and suggested procedure, the necessary steps required in reference to certain special classes of aliens, relief from deportation of all types, whether administrative or legislative. There is a chapter on judicial review of exclusions and deportation orders, habeas corpus, declaratory review, discretionary action and review of other immigration determinations, as well as review of claims to American citizenship. A chapter is devoted to civil liabilities and criminal offenses under the Immigration and Nationality statutes.

There is an appendix with charts which are especially helpful to indicate, for instance, the forms to use and the sections of law involved in obtaining visas, preferences within quotas, waivers of excludability or deportability, criminal offenses, etc. The appendix also has forms for use in almost every type of immigration matters including suggested forms for judicial review. The index itself is well arranged so that persons seeking an answer to any type of problem are almost certain to find the right sections in *Immigration Law and Procedure.*

The footnotes, with reference to statutes, cases and administrative decisions are plentiful. In fact, many of the administrative decisions, whether of the Board of Immigration Appeals or of Regional Commissioners or of the Attorney General or Commissioner of Immigration and Naturalization, would not ordinarily be known to a practitioner unless he was highly specialized in this field.

The chapter on Judicial Review not only goes through the entire subject, such as, for instance, the right to review, the timing and the method, but also gives the procedures in habeas corpus, declaratory review, etc. Review of discretionary actions, with exceptions to the general rule and the effect of the pending review proceedings are fully discussed and implemented with decisions. Other immigration determinations, such as review of denial of passport, exclusions and expulsions of alien crewmen, determination of statutes, forfeiture of bonds, administrative fines and penalties, and suits against officers, will be found in this chapter. An authoritative discussion of the field of declaratory judgments relating to United States citizenship are also part of the section on Judicial Review.

One of the little known facts about this particular type of proceeding is the provision that the claimant must be within the United States. Hence, since the passage of the 1952 Act, many United States citizens residing abroad who have been denied United States passports by American Consuls or embassies, have no right to a judicial review unless they can enter

the United States under the section of the law which gives them the right to enter for such specific purpose. However, if the United States diplomatic officer abroad refuses the necessary documents for entry into the United States for a stated particular purpose, there is no judicial review of such refusal.

This book, I believe, is the finest publication on immigration and a must for every lawyer seeking to practice in this field. I have been in law suits where the United States Attorney, the liaison-man from the Immigration and Naturalization Service, and all lawyers on "the other side" have all arrived in court with this volume, the "bible" of immigration law today. I recommend *Immigration Law and Procedure* to the veteran as well as the freshman practitioner in the immigration field.

DEADLINE

THE DEADLINE for the filing of applications to the Conference on Jewish Material Claims Against Germany by organizations, institutions and communities seeking the allocation of funds for the year 1962 is June 30, 1961, the Conference announced in New York. Applications should be submitted in twenty copies.

SORROW

The Decalogue Society of Lawyers announces with deep regret the death of the following members.

Maurice Cohn
Albert S. Light
Jacob A. Mogill
Clifford K. Rubin

MRS. FANNIE SILVERZWEIG

The Decalogue Society of Lawyers extends its deep sympathies in the bereavement of our past president David F. Silverzweig and his family, upon the death of his mother, Mrs. Fannie Silverzweig on March 26, 1961, in Skokie, Illinois.

Other survivors are: two daughters, Mrs. Gail Vetzner, Mrs. Merl Bulwa and another son, Saul F. Silverzweig.

The Decalogue Journal edited by Benjamin Weintroub is one of the finest assets of our Society. It adds lustre and prestige not only to our organization, but to the entire legal profession as well.

Judge Julius H. Miner

Lawyer's LIBRARY

Learning is an ornament in prosperity, a refuge in adversity, and a provision in old age. —ARISTOTLE

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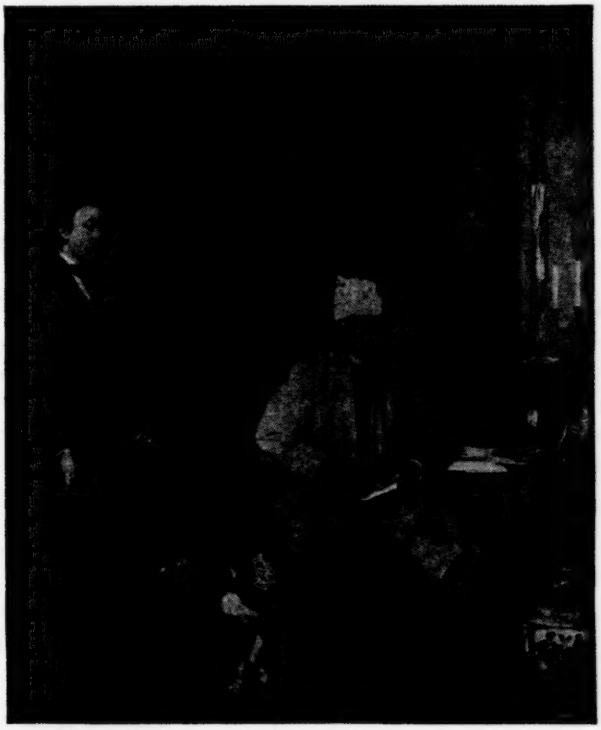

THE LETTER OF INTRODUCTION — DAVID WILKIE

David Wilkie, 1785-1841, was one of the greatest Scottish genre and portrait painters.

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—TOM C. CLARK, *Associate Justice of the United States Supreme Court*